

The BOCs should also be authorized to provide certain long distance services for calls inbound to the cellular exchange, and the authority to provide such services is included in the Department's proposed order, which authorizes the provision of

Call Completion Services, *i.e.*, interexchange services resulting when a caller directs a call to a subscriber of a Wireless Exchange Carrier that has instructed that carrier to forward calls to a location in another exchange area. Such remote locations may include a network address (such as a telephone or paging number) stored at the MTSO, or a voice mailbox or similar storage facility. In such cases, the BOC may provide only the interexchange portion of the call from the point where it is redirected by the subscriber's Wireless Exchange Carrier's MTSO.

Proposed Order, Section VIII(L)(2)(b). This proposal reflects what the BOCs seek: the right to forward calls to the cellular subscriber's chosen destination (including a voice mailbox), according to the *subscriber's* PIC, rather than that of the call originator. The call originator might have thought he was making a local call, when the subscriber had forwarded her phone to a distant city; the subscriber pays for that long distance segment and, if she chose the BOC as her PIC, the BOC would carry the call. (See BOC Mem. 13)

The authority in this paragraph does *not* include the authority to provide an "800 access to cellular" service, which the BOCs have not sought. However, in the proposed consent decree with AT&T arising from AT&T's proposed acquisition of McCaw, the Department has agreed that AT&T should have the right to market a "calling party pays" cellular service, *AT&T/McCaw Decree*, § IV.F.2, and competition will be served if the BOCs can offer a similar service.⁴⁹

explicit on the face of the order.

⁴⁹ This service which would be offered to subscribers of Wireless Exchange Carriers would permit use of a number that the subscriber could give out that would permit callers that were willing to pay charges for wireless services to reach the subscriber through the wireless terminal. It is the Department's understanding that the availability of this service may be important to the continued

c. Entities Bound by the Waiver. Unlike the BOCs' proposed order, the Department's proposed order applies to any entity that is a "BOC" within the meaning of the Decree. The Department does not propose to redefine "BOC" for the purposes of this order.

d. Equal Access Plans. The Department concurs in the BOCs' proposal that they provide equal access plans, but Section VIII(L)(4)(b) of the Department's proposed order specifies the matters that those plans should describe:

Each BOC's compliance plans shall include a plan for implementing equal access on a nondiscriminatory basis in the context where the BOC access provider is also a competing interexchange carrier. These plans shall include detailed procedures for implementing equal access from any Wireless Exchange System where a BOC acquires a controlling interest after the effective date of this Section VIII(L), procedures for identifying to new Wireless Exchange Service customers their choices for interexchange services, the terms and conditions whereby unaffiliated interexchange carriers will be offered the opportunity to interconnect at any BOC Wireless Exchange Systems MTSO, the procedures for disseminating to interexchange carriers any planned changes in network services or plans for implementing new services that may affect such carriers services, procedures for assuring that any personnel of a BOC Wireless Exchange Carrier that is involved in the marketing of interexchange services shall not have access to proprietary information of other interexchange carriers, including but not limited to network interconnection arrangements and lists of interexchange carrier customers or their usage statistics; a plan for the separation of the personnel that market interexchange services from the personnel that administer presubscription; a plan for implementing Calling Party Pays service if the BOC wishes to offer such a service; a plan describing its procedures to assure compliance with Section VIII(L)(2)(e) of this Decree (including a plan for providing nondiscriminatory access to IS-41 or similar databases for all carriers); and a plan for implementing CDPD service.

The effect of these sections is to make clear what matters the equal access plans should discuss, and that there is no authority to provide interexchange services in the absence of an

rapid growth of the wireless industry and that the feasibility of this offering is likely to depend on whether the caller will know in advance what the charges for the call will be. Thus, it is contemplated that for this service to be successful, carriers may need to average airtime and toll charges so that a flat per-minute rate may be associated with the service. Thus, an exception to the requirement that separate charges for wireless access and interexchange services is appropriate in this instance.

effective plan. A plan is only effective if not disapproved by the Department. The requirement to submit plans and the Department's responsibility to review them -- and the Department's right to reject inadequate plans -- should relieve the Court of the need to administer the minutiae of equal access, and should provide the BOCs sufficient flexibility in the offering of services, without the need to return to the Court for ministerial matters. Interested parties will have an opportunity to review the equal access plans and to alert the Department to deficiencies they perceive.

2. The Resale Restriction Will Eliminate Most Risks of Discriminatory Interconnection.

The Department proposes that the BOCs' authority to provide interexchange services be limited to the *resale* of switched interexchange services provided by others. The Department has also indicated that its current view is that the BOCs should purchase no more than 45 percent of their interexchange needs from a single source.

The BOCs tell the Court, as they told the Department in seeking the Department's support, that "as a practical matter, . . . it is likely that the BOCs will mostly act as resellers of switched services in this context." (BOC Mem. 16) Nonetheless, the BOCs seek the authority to build and use interexchange facilities. The Department believes that limiting the BOCs to switched resale will substantially reduce the dangers of discrimination, and proposed that limitations on that basis.

By limiting the BOCs to reselling switched interexchange services, the BOCs will not be able to construct or operate facilities, and therefore they will be unable to give their own facilities favorable treatment. Since they will be reselling other carriers' services, any

discrimination aimed at favoring the BOC's service would be readily apparent at least to the carriers whose services the BOC was reselling. The benefits of that discrimination would flow to that carrier for all of its traffic, and that carrier would be competing with the BOC. Therefore, the risks of discrimination are here accompanied by a proportionately smaller benefit, reducing the likelihood of that discrimination. These dangers are further reduced by the requirement that the BOC obtain not more than 45 percent of any system's interexchange services from any one provider, thereby requiring the BOC to use three carriers and leaving less opportunity for the BOC to discriminate against other carriers, and likewise increasing the difficulty of collusive behavior.⁵⁰

3. Marketing and Unbundling Requirements Are Necessary To Ensure that Presubscription Provides a Genuine Opportunity for Competing Interexchange Carriers.

Meaningful equal access is premised on the idea that procedures can be put in place to provide competing interexchange carriers a reasonable opportunity to compete for customers' business. Merely requiring the BOC to offer presubscription seems insufficient, if the BOC can bundle cellular and interexchange services together in blended, single-price offerings that do not permit customers the opportunity to compare the BOC's offerings with its

⁵⁰ The BOCs have objected to this requirement as preventing them from obtaining the bulk discounts on long distance services that would make it possible for them to resell interexchange services. (BOC Mem. 17) However, the BOCs have not provided any evidence that the anticipated volumes will not entitle them to substantial discounts under currently filed tariffs, at reasonable volume predictions. The Department has requested further information from the BOCs on this subject. Although the BOCs argue that the 45 percent "condition would prevent the BOCs from putting price pressure on any" interexchange carrier (BOC Mem. 17), the Supreme Court's recent holding that *all* interexchange carriers must file tariffs, *MCI Telecommunications Corp. v. American Telephone & Tel. Co.*, 114 S. Ct. 2223 (1994), limits the concern that the BOCs would be unable to take advantage of tariffed bulk discounts.

competitors': if the BOC can market its interexchange service together with its cellular service, while requiring the customer to make separate inquiries to discover the availability of competing carriers; or if the BOC can provide a combined bill for its cellular and long distance service, while requiring its competitors' customers to receive and pay two separate bills.

The Department's proposed order prevents these measures, and thus prevents the BOC from marketing or offering services that its interexchange competitors cannot match *by reason of the BOC's control of the duopoly cellular exchange*. To the extent the BOC designs service offerings that are attractive to customers, and successfully markets them, the BOCs will properly obtain business. But their interexchange competitors will likewise be able to make offerings that might be attractive to customers, on the same basis as the BOCs can.

The specific restrictions, which are set forth in Section VIII(L)(3)(f) and (g) of the Department's proposed order, require a separation of the persons responsible for administering presubscription (referred to as the "wireless exchange sales force") from persons who market the BOC's interexchange services (the "long distance sales force"). However sold, the BOCs would be required to state separately the prices for cellular service and long distance service, and would not be permitted to offer blended or bundled service offerings. Proposed Order, § VIII(L)(3)(a)(5). Nothing would prohibit them from making claims in marketing or advertising that either their cellular service or their long distance service is more favorably priced than their competitors'. If a BOC provides its customers with a single bill for cellular and interexchange service, it would be required to permit similar billing arrangements by its long distance competitors. Proposed Order, § VIII(L)(3)(b).

The Department would not seek to preclude the BOCs from marketing the long distance services it believes they should be allowed to provide, and believes that the long distance sales force should be permitted to sell cellular service as well. However, this sales force should not be given any advantages not also given to the BOCs' interexchange competitors: It should receive any cellular customer lists at the same time and under the same terms as the BOCs' competitors, and should not receive any *additional* information about those customers (eg., their cellular telephone numbers, their usage patterns) unless the same information is provided to competing interexchange carriers.⁵¹ The long distance sales force is also required to advise customers that they have a right to choose interexchange carriers. Proposed Order, § VIII(L)(3)(g)(3).

The "wireless exchange sales force," the group responsible for administering presubscription, includes salespersons in retail stores and those who *receive* inquiries. Those salespersons, like persons selling BOC cellular service today, would be required to provide the customer with a ballot to select an interexchange carrier, and would not be allowed to sell long distance service or advocate that the customer purchase BOC long distance service. Proposed Order, § VIII(L)(3)(f).

The Department does not agree with the BOCs that these restrictions are "unduly restrictive." (BOC Mem. 18) Rather, these marketing and billing restrictions are necessary to allow the BOCs to market their interexchange services while providing their competitors with

⁵¹ Those carriers would be restricted in their use of that information to the marketing of interexchange services; interexchange carriers affiliated with wireless carriers would not be able to use this confidential information to market wireless services. The largest interexchange carrier, AT&T, is subject to the same separation and marketing restriction requirements. *AT&T/McCaw Decree*, Section IV.C.

the opportunity to compete on equal terms, thereby providing consumers with a meaningful opportunity to make an informed choice. By comparison, the BOC proposed order and equal access plan are silent (or at best ambiguous) as to whether bundled service offerings are permitted, and whether competing interexchange carriers will be permitted to create their own bundles.⁵² The Department's proposal requires unbundled offers, and requires the BOCs to provide their long distance competitors with customer lists at the same time as that information is provided to their long distance sales force.⁵³ Under these arrangements, carriers that do not control cellular exchanges, and cannot themselves provide both cellular and long distance service, nonetheless have an opportunity to market long distance services to BOC cellular customers.

C. Appropriate Safeguards Are Also Required To Prevent Abuse of the Landline Exchange.

It is also true, as AT&T has stressed, that the possibility exists that the BOCs could

⁵² The BOC order does require that exchange access and exchange services for such access be provided to interexchange carriers "on an unbundled basis, that is equal in type, quality and price to that provided to any interexchange service provided by the Bell company or an affiliate thereof." BOC Proposed Order, § 1.4, p. 3. If there were separations between the cellular and long distance sales operations, this language presumably would prohibit the BOC from "selling" cellular service to an affiliated packager at lower prices than offered to competing interexchange carriers, and the BOC could not bundle cellular and long distance services in combinations that other interexchange carriers could not match. However, in the absence of such separations, it is unclear whether the BOCs' proposed order would in fact prevent discriminatory bundling, and it would be difficult for the Department to determine, in attempting to enforce the conditions to this waiver order, whether the BOC had discriminated. The Department's proposed order makes these discriminations clearly prohibited and more easily detected.

⁵³ The BOC equal access plan provides that a Bell cellular affiliate "may use customer names, addresses and mobile numbers to market its own interexchange operations only if it provides that information on the same terms and conditions to unaffiliated" interexchange carriers. (BOC Model Equal Access Plan, p. 4) However, absent separation between the cellular and long distance sales forces, there can be no genuine assurance that the BOC will in fact not receive these customer names before its competitors do, and little opportunity to enforce this requirement.

use their control of the local exchange to discriminate against competing interexchange carriers, who rely on the local exchange for their access to both the wireline and nonwireline cellular exchanges. Cellular exchanges likewise relies on the local exchange for interconnection to local exchange customers, for access to interexchange carriers, and often for transport between cellular switches and cell sites within the cellular network.

While the dangers of discrimination in these local landline exchange facilities is present, that danger can be constrained by injunction. The Department's proposed order specifically enjoins discrimination by the local exchange, directed either at competing wireless providers or at competing interexchange providers. Proposed Order, § VIII(L)(3)(a)(1), (2). In addition, Sections VIII(L)(1)(c) and VIII(L)(2) make clear that the authority to provide interexchange services is limited to the BOC's Wireless Exchange Service, which must be physically and structurally separate from its local telephone operations. The long distance sales force in particular must be a distinct sales force, with separate managers, from any sales force that sells products or services of any local telephone company. Proposed Order, § VIII(L)(3)(g)(1).

These requirements are sufficient to prevent discrimination *in this narrow circumstance*. Not only would such discrimination be prohibited explicitly, and subject to civil fine and loss of the authority to provide wireless interexchange services, Proposed Order, § VIII(L)(5), but it would also be quite difficult to accomplish effectively, under the restriction that the BOCs be limited to reselling other carriers' switched interexchange services. The resale requirement reduces the risk of discrimination in the local exchange, possibly even more than in the cellular switch. The BOCs will be sending their own long

distance traffic over several carriers' facilities, which are also handling traffic originating in the local exchange (for which the BOCs may not compete). In addition, the BOCs will be sending their interexchange calls to interexchange carriers that will presumably also be serving their own customers that are subscribers of the BOC wireless service. If the quality of transmission, for example, was significantly better for the BOC's customers, it would be readily apparent to the interexchange carrier. In fact, any effort by the BOC to degrade the transmission of competitors' traffic might well result in adversely affecting its own interexchange customers. Moreover, since there are two cellular providers in each market, a BOC considering a strategy of degrading competitors' interexchange connections might be concerned that customers would not associate their service problems with the interexchange service, and thus might switch cellular carriers.

It is also significant that the direct connection option exists for interexchange carriers deciding to obtain exchange access to their wireless customers without routing their calls through the LEC's switched network. The existence of this possibility could well deter discriminatory behavior out of concern that to do so would risk loss of access charge revenues. The benefits of discrimination in these circumstances are slight, and the risks of detection may be more substantial.

D. Provisions for Incidental Relief from the Decree's Equal Access Requirements.

The BOCs' motion also seeks some incidental relief from the Decree's equal access requirements in connection with their paging and radiolocation businesses, and in connection with certain aspects of their cellular businesses. Subject to some minor clarification, the Department believes that these modifications (which AT&T has not previously opposed) are

in the public interest.

Section VIII(L)(2) of the Department's proposed order, which parallels Section II(a) of the BOCs' proposed order, states that the Decree's equal access and nondiscrimination requirements shall not apply to paging (with acknowledgement) or radiolocation. These are substantially competitive businesses, without the market power of cellular, and the Court has already granted generic interexchange relief for one-way paging.⁵⁴ The equal access relief confirmed here was implicit in that paging order, but this order confirms that a BOC paging affiliate may combine interexchange services necessary to provide paging with the paging services itself, and need not hand off interexchange links within the paging network to other carriers. The Department's proposed order confirms that this relief does not relieve BOC *local exchanges* of their equal access and nondiscrimination obligations towards unaffiliated paging companies; and that it does not implicitly grant the BOCs' motion for a waiver for 800 access to paging, which is now pending with the Court (and which the Department supports). (U.S. Mem., Feb. 1, 1993)

Section VIII(L)(2)(e) of the Department's proposed order, which parallels Section II(b) of the BOCs' proposed order, provides that BOC cellular systems can transmit IS-41 and comparable administrative messages on a non-equal access basis, so long as they do not discriminate in favor of their own interexchange carrier in doing so. IS-41 is an industry standard that permits cellular systems to signal each other in order to, among other things, locate roaming subscribers and determine whether their cellular phones are available to

⁵⁴ Memorandum and Order, *United States v. Western Elec. Co.* (D.D.C. Feb. 16, 1989). Paging with acknowledgement does not seem to be any more likely to pose competitive risks than one-way paging.

receive calls. Only if the signaling messages indicate that the call can be completed is a voice path established to complete the call. The proposed order will permit the BOC cellular systems to use IS-41 to locate their subscribers; they will then be required to turn over the call to the customer's PIC (which could be the BOC or an unaffiliated carrier) to complete the call.

Section VIII(L)(2)(3) of the Department's proposed order permits the BOCs to resell other cellular carriers' cellular services, whether or not those other carriers provide equal access. Today the BOC can resell other BOCs' cellular services, but not the services of cellular carriers that bundle cellular and interexchange services. This relief will permit the BOCs to resell the services of non-BOC cellular carriers, and thereby attempt to provide greater regional or national coverage, in competition with other providers who may seek to offer national presence (such as AT&T). This section also addresses the situation in which the customer of a non-equal access cellular system roams into the BOC cellular system. If that customer does not have a PIC, the BOC may complete that customer's long distance calls by using the BOC's long distance services.⁵⁵

The proposed modification, Section VIII(L)(2)(f), would permit the BOCs to provide interexchange telecommunications services in connection with the offering of Cellular Digital Packet Data Service ("CDPD"). Although not specifically requested by the BOCs, the Department is including this service in its Proposed Order in view of the fact that a similar provision was included in the Final Judgment proposed in connection with AT&T's

⁵⁵ This section also permits the BOCs to handle these default calls where the roaming customer has selected an interexchange carrier that does not serve the BOC system.

acquisition of McCaw. *AT&T/McCaw Decree*, § IV.H; *see id.* § II.F. This provision would allow interexchange transport of packetized data from the cell sites to centralized points before it is routed through a switching or routing device that is capable of handing it off onto separate facilities specified by the customer. At this centralized point the modification specifies that the CDPD provider will hand the message off to (or receive a message from) an Internet Node within the same exchange area, or transfer it to a private network facility or interexchange carrier specified by the customer. Interexchange facilities used by a BOC to transport the messages to and from the centralized points must be obtained from an unaffiliated interexchange carrier and the BOCs are not authorized to provide the interexchange carrier service of transporting the messages from the centralized points. The procedures for specifying the selection of the customers interexchange carrier for CDPD must be specified in the BOCs' compliance plans before they may implement this provision. The Department's recommendation for this provision is based on our understanding that it will significantly facilitate the early provision of this important service especially in areas of relatively low demand.

These provisions give the BOCs the ability to offer and provide cellular services in a reasonably efficient manner, without seriously impairing the objectives of the Decree's equal access provisions. None of these modifications will prevent a cellular customer from obtaining interexchange services from the carrier of their choice; these provisions will only permit the BOCs to offer cellular services to more customers more efficiently.

III. THE COURT SHOULD DEFER CONSIDERATION OF THE BOCs' REQUEST FOR GENERIC MODIFICATION OF CELLULAR EXCHANGE AREAS.

The BOCs also seek relief expanding the areas in which they are permitted to offer local service to Major Trading Areas defined by Rand McNally, *plus* existing cellular service areas as they have been expanded by the Court in 49 cellular waiver orders; *plus* adjacent Rural Service Areas ("RSAs"). As a result, several of the calling areas that would be created by the BOCs' waiver are substantially larger even than MTAs.⁵⁶

Enlarging local calling scopes moves traffic from the interexchange market, which is at least somewhat competitive, to the cellular market, which in the Department's view is *less* competitive. By AT&T's estimate, fully 25 percent of all interexchange traffic is *within* MTAs.⁵⁷ Thus, the proposed relief could move as much as 25 percent of cellular-originated long distance traffic from more competitive interexchange markets to less competitive cellular markets.

Recognizing the consequences of expanding local calling areas, the Court has held that it would only do so upon a showing of "community of interest," so that the Court could be

⁵⁶ For example, see the following maps attached to the Affidavit of Peter A. Morrison (June 15, 1994), submitted by the BOCs: Cincinnati-Columbus-Dayton, El Paso, Knoxville, Clarksville, Oklahoma City, Phoenix, Portland, Salt Lake City, Tulsa, Wichita. Although the BOCs' memorandum makes no mention of the fact that they seek relief that is *broader* than MTAs, that is the effect of their proposed order's provision that, "where a LATA or integrated service area authorized by a prior waiver overlaps two or more major trading areas, the major trading area in which the largest portion of the LATA or integrated service area falls (as determined by geographic area) shall be deemed to include the entire LATA or integrated service territory." BOC Proposed Order, p. 5.

⁵⁷ AT&T's Supplemental Opposition to RBOCs' Motion to Exempt Wireless Service from Section II of the Decree, p. 17 (Oct. 25, 1993). This 25 percent estimate would be reduced in light of existing cellular waivers, which have expanded the BOCs' coverage areas. See BOC Mem. 44 ("the switch to MTAs would not involve a very large expansion"). To the extent that current coverage areas approach MTAs in size, less traffic would be "duopolized," but there is likewise less need for relief.

satisfied that "the public benefits accruing from slight departures from the strict LATA boundaries to accommodate motorists with cellular phones were so substantial that they outweighed, on this limited basis, the dangers to fair competition."⁵⁸ Traffic patterns and "metropolitan complexes" have been the Court's primary guideposts in making these exceptions, as the BOCs acknowledge. (BOC Mem. 41)

The BOCs had 23 waivers pending at the end of 1991, when they agreed to hold those waivers in abeyance pending their pursuit of this generic wireless waiver. Many of these waivers, such as BellSouth's waiver for all of the State of Florida,⁵⁹ cannot be justified by reference to traffic patterns or metropolitan complexes except in the most attenuated fashion. Rather, MTAs reflect patterns of *commercial* activity (BOC Mem. 43), not the patterns of *personal* movement on which the Court has relied. While "patterns of traffic" may exist among any two cities chosen at random (in that someone probably went between them once),

⁵⁸ *Triennial Review*, 673 F. Supp. at 552, quoted, *United States v. Western Elec. Co.*, 1990-2 Trade Cas. ¶ 69,177, at 64,455 (D.D.C. 1990).

⁵⁹ Motion of BellSouth Corporation for a Waiver of Section II(D) of the Modification of Final Judgment To Allow BellSouth Corporation To Provide Integrated MultiLATA Cellular Service, May 9, 1991. BellSouth made virtually no attempt to show a community of interest for the State of Florida. Rather, BellSouth relied principally on arguments that its cellular service faces competition. The *only* evidence of community of interest for the State of Florida that BellSouth offers is that the Department of Transportation has observed that a certain number of vehicles crossed LATA boundaries on a particular day. The fact that vehicles left the Tampa LATA on a particular day provides *no* support for the proposition that "subscribers will want and expect to be in communication with mobile units in this traffic which regularly crosses from one LATA to another," *Mobile Services Decision*, 578 F. Supp. at 648, much less that people drive from Tampa to Miami as regularly as they drive from New York City to northern New Jersey. See also Southwestern Bell's Response to Comments (March 1, 1990) ("there is no requirement in Section VIII (c) that a BOC must make a showing that a "community of interest" exists before the Court can grant a MultiLATA cellular waiver").

MTAs do not purport to represent areas within which people move on a daily basis.⁶⁰

It is also suggested that the FCC's decision to license some PCS spectrum blocks using MTAs indicates that MTAs are appropriate local calling areas. (BOC Mem. 43-44) The FCC has also "embraced" Basic Trading Areas, which are substantially smaller than LATAs. *FCC PCS Order* ¶ 76, at 7733. None of these determinations of the appropriate size of radio licenses -- the context in which the Commission considered MTAs as providing "economies of scale and scope necessary to promote the development of low cost PCS equipment" (BOC Mem. 44, *quoting FCC PCS Order* ¶ 75, at 7733) -- reflects a determination by the Commission of the appropriate local calling areas for cellular systems providing equal access.

That issue will be taken up if the Commission decides to impose equal access on cellular or other wireless carriers, an issue now open for comment before it. The United States proposes that the Court defer redefining cellular local calling areas until the Commission has acted; the BOCs, having argued that the Commission's "embrace" of MTAs in another context is determinative, resist allowing the expert agency to attempt to address this issue.

It would not be sensible for the Court and the Department to embark on this mapmaking project again, at the same time as the Commission is considering the issue. The result could be that, instead of the one cellular calling area map now devised by the Court, there could be three maps: the old adjusted LATA map, the new map drawn by the Court

⁶⁰ Thus, for example, the Los Angeles MTA includes Las Vegas; the New York City MTA includes Burlington, Vermont; the San Francisco MTA includes Reno, Nevada; and the Spokane, Washington, MTA includes Billings, Montana -- a distance of nearly 1,000 miles (according to Rand McNally).

(whether MTAs or something else), and a different map developed by the FCC.

It seems more sensible for the FCC to act first. If the Commission adopts equal access, and draws a map, then the Court can determine whether that map addresses the needs of the Decree and, if so, conform the Decree's cellular LATAs to the FCC's decision. If the FCC determines *not* to impose equal access, then the Court can revisit this issue -- and the BOCs can attempt to make a more persuasive case, or seek a more reasonable alternative. In the meanwhile, the Department will consider the pending cellular geography waiver ~~had been deferred, to be ripe for decision, and will advise~~ support or oppose specific waivers.

Conclusion

For the foregoing reasons, the Court should deny the motions of BellSouth and Southwestern Bell for complete removal of the equal access and provisions of the Decree as applied to wireless businesses; and should grant the motion of the Bell Companies for a waiver of the interexchange restriction subject to the terms and conditions set forth in the accompanying proposed order.

July 25, 1994

Respectfully submitted,



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EXHIBIT
(D)

NCRA Comments
Docket 94-54
September 12, 1994

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No. 82-0192 HHG

WESTERN ELECTRIC COMPANY,)

INC. and AMERICAN TELEPHONE)

AND TELEGRAPH COMPANY,)

Defendants.)

EXHIBITS TO

MEMORANDUM OF THE UNITED STATES IN RESPONSE
TO THE BELL COMPANIES' MOTIONS FOR GENERIC WIRELESS WAIVERS

July 25, 1994

EXHIBITS

Exhibit

Department of Justice Letter Re: Bell Companies' Request for a Generic Wireless Waiver	1
Ameritech Documents	2
Bell Atlantic Documents	3
Pacific Telesis Documents	4
Southwestern Bell Documents	5
US West Documents	6
Florida Pricing and Market Share Charts	7
Affidavit of Larry Jacobs	8
Deposition of James Barksdale	9

EXHIBIT 1



Antitrust Division

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555 Fourth Street, N.W.
Washington, D.C. 20001

June 14, 1994

BY TELECOPY AND FIRST CLASS MAIL

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Re: *United States v. Western Electric Co., et al.*
Bell Companies' Request for a Generic Wireless Waiver

Dear Mr. Kellogg:

The Department has concluded its investigation and analysis of the Bell Companies' request, submitted as modified on November 12, 1993, for a waiver of the interexchange line of business restriction of Section II(D)(1) of the Modification of Final Judgment ("MFJ") as applied to their "wireless" businesses, and other relief (the "Generic Wireless Waiver"). The Bell Companies ("BOCs") may proceed to file their motion for that waiver with the Court.

The Department intends to support the Generic Wireless Waiver, as proposed in the Bell Companies' submissions of September 24 and November 12, 1993, only to the extent stated in this letter. The Department reserves its right and responsibility to modify its position if it appears to the Department, in light of comments of interested persons, further investigation or subsequent developments, that a change of position is appropriate. The discussion herein follows the form of the BOCs' proposed order of September 24, 1993, as modified by your letter of November 12, 1993.

I. Interexchange Services. The Department intends to support the BOCs' request for a waiver of the interexchange prohibition, subject to the conditions stated in the proposed order and model equal access plan, on the following conditions:

a. That the authority to provide interexchange services is limited to the provision by resale of switched interexchange services. Our current view is that

not more than forty-five percent of any BOC cellular system's resold interexchange service should be purchased from any one interexchange carrier.

b. That the conditions on the proposed waiver apply to any entity that is a BOC within the meaning of the MFJ.¹

c. That the scope of the authority to provide interexchange services is restricted to

(1) Telecommunications originating in a cellular exchange,² as currently configured, or other similarly configured networks, distinct from the landline local exchange, wherein radio is used to connect the network with a customer who is not at a fixed location. The BOCs have based their reasoning supporting a waiver and the design of their proposed order and equal access plan on the architecture of their existing cellular systems, and the Department will not support a waiver that is not limited to such systems or systems with similar architectures.

(2) Telecommunications intended by the originator to be directed to a cellular exchange, as described above, but that the cellular exchange subscriber has forwarded to another destination (including a voice mailbox or similar storage facility). The authority to provide interexchange services under this condition is limited to that portion of the interexchange service from the cellular system to which the telecommunication was directed by the originator to the ultimate destination. This condition specifically does not authorize the provision of interexchange services from the point of origination to the cellular system (e.g., an "800 access to cellular" service), which the BOCs have not sought in this proceeding.

d. That the authority be conditioned on an explicit requirement that:

"Each Bell operating telephone company shall offer to all interexchange carriers exchange access and exchange services for such access on an unbundled basis that is equal in type, quality and price to that provided to any interexchange service provided by the Bell company or any affiliate thereof."

¹ These conditions likewise apply to the relief sought in Sections II(b), II(c) and III of the proposed order, and to the transmission of IS-41 or comparable administrative messages pursuant to Section II(a). The Department recommends that Section II(a) be separated into two sections for ease of reference.

² "Cellular exchange" within the meaning of this letter refers to an exchange service offering commercial mobile services, as defined in 47 U.S.C. § 332(d)(1), in the 800 MHz radio bands. The Department understands that such exchange services are provided by companies that are, pursuant to FCC regulation, separate subsidiaries from local telephone exchange companies ("LECs"), and that the principal facilities used to provide cellular exchange service, e.g., switching equipment and radio base stations, are physically and operationally separate from LEC facilities.

e. That the authority to provide interexchange services be conditioned on an explicit requirement that:

"Each Bell operating telephone company shall not discriminate between any mobile service provided by the Bell company or an affiliate thereof and any nonaffiliated mobile service provider or between an interexchange service provided by the Bell company or an affiliate thereof and any nonaffiliated interexchange carrier in the:

"(a) establishment and dissemination of technical information and interconnection standards;

"(b) interconnection and use of the Bell operating telephone company's telecommunications service and facilities or in the charges for each element of service; and

"(c) provision of new services and the planning for and implementation of the construction and modification of facilities used to provide exchange access."

f. That the authority to provide interexchange services be conditioned on an explicit requirement that:

"Each Bell Operating Company or affiliate thereof providing commercial mobile service within the meaning of 47 U.S.C. § 332(d)(1) shall offer to all interexchange carriers exchange access and exchange services for such access on an unbundled basis that is equal in type, quality and price to that provided to any interexchange service provided by the Bell company or any affiliate thereof."

Implicit in this concept and in the concept of equal access is that the price, quality and terms upon which cellular service is offered shall not vary with the customer's choice of interexchange carrier. That proposition should be affirmed explicitly:

"A Bell Operating Company or affiliate thereof shall not sell or contract to sell wireless service at a price, term or discount that depends upon whether the customer obtains interexchange service from the Bell Operating Company or an affiliate thereof."

In addition, the Department believes that the same proposition should apply to the sale of interexchange service:

"To the extent that a Bell Operating Company or affiliate thereof provides interexchange services pursuant to this order to unaffiliated wireless services providers or customers thereof, the Bell Operating Company shall not sell or contract to sell interexchange service at a price, term or discount that depends upon whether the customer obtains wireless service from the Bell Operating Company or an affiliate thereof."

Finally, in order for these guarantees to be meaningful, the Department believes that the Bell Operating Companies should be required to state separately the prices, terms or rate plans for (a) wireless services and (b) interexchange services.

g. That the authority to provide interexchange services be conditioned on an explicit requirement that:

"Each Bell Operating Company or affiliate thereof providing commercial mobile service within the meaning of 47 U.S.C. § 332(d)(1) shall not discriminate between any interexchange service provided by the Bell company or an affiliate thereof and any nonaffiliated interexchange service carrier in the:

"(a) establishment and dissemination of technical information and interconnection standards;

"(b) interconnection and use of the Bell Operating Company's or affiliate's telecommunications service and facilities or in the charges for each element of service; and

"(c) provision of new services and the planning for and implementation of the construction and modification of facilities used to provide exchange access."

h. That the BOCs shall file with the Department of a mobile equal access plan, which plan shall not be effective (1) until 90 days after filing, if not disapproved by the Department, or (2) if disapproved by the Department; that there be no authority to provide interexchange services pursuant to this waiver until an equal access plan has become effective; and that the plan at a minimum contains the specifications contained in the BOC Model Equal Access Plan submitted on September 24, 1993, as modified by your letter of November 12, 1993, except in the following particulars:

(1) The Department believes that it is necessary in the provision of equal access that interexchange services not be sold by the persons selling exchange services and who are required to administer presubscription (the "cellular sales force"). It is the Department's contemplation that this restriction would apply to retail store agents and to other BOC salespersons who receive inquiries by prospective subscribers, i.e., salespersons who handle "incoming" prospects or requests for service.

(2) Persons selling long distance services (the "long distance sales force") may sell cellular services and long distance services on the following conditions:

(a) That the long distance sales force be a distinct group of individuals, with separate managers, from the cellular sales force and from any sales force that sells products or services of the Bell Operating telephone companies.